

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DESTRY E. THOMAS,	}	
TDCJ-CID NO.1257786,	}	
Plaintiff,	}	
v.	}	CIVIL ACTION H-09-3222
	}	
ALFONSO CASTILLO, <i>et al.</i> ,	}	
Defendants.	}	

OPINION ON DISMISSAL

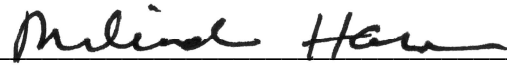
Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice—Correctional Institutions Division, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Docket Entry No.1). Plaintiff also seeks to proceed *in forma pauperis*. (Docket Entry No.2). A prisoner, however, cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g). The only exception to revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in imminent danger of serious physical harm. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff's complaint does not indicate that he is in imminent danger.

Plaintiff's litigation history reveals that he falls within the provisions of section 1915(g). *See Thomas v. Davis*, Civil Action No.H-09-2823 (S.D. Tex. Sept. 30, 2009) (dismissing complaint pursuant to 28 U.S.C. § 1915(g)).

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g). Plaintiff's motion to *proceed in forma pauperis* (Docket Entry No.2) is DENIED. All pending motions are further DENIED.

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, this 11th day of November, 2009.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE